S.B.CIVIL MISC. ARBITRATION APPLICATION NO.40/2003

M/s.Adinath Enterprises vs. Anil Kumar Jain

DATE OF ORDER : 6/10/2006

HON'BLE SHRI RAJESH BALIA, J.

Mr. Himanshu Maheshwari, for the applicants.
Mr.R.S.Shekhawat, for the respondent.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed way back in 2003. The respondent – Anil Kumar Jain was not being served notwithstanding number of attempts have been made to serve notice by regular process. It was stated by the learned counsel for the appellant on affidavit that address submitted by him is the correct address. The proximity of the relationship of applicant with unserved respondent shows that the applicant's statement about address of respondent is true. Respondent - Anil Kumar Jain is none other than nephew of applicant. In spite of these things, notices have been returned with process server's report that receptionist informed that no firm in the name of M/s.Adinath Enterprises exists at the given address.

In these circumstances, accepting the contention that it is

not possible to serve notice on the respondent in ordinary course, the court directed to effect the service by substitute process and notice of the application was directed to be published in Navbharat Times in Delhi Edition. The notice was published on 28th July, 2006.

Learned counsel for the respondent states that respondent has come to know about the application through publication dated 28/6/2006 and wants sometime. It was further stated that he has received instructions only today and a date may be fixed for hearing on this application.

The facts that the notices were published in newspaper on 28/7/2006 and instructions have been released to the counsel only on the date of hearing to seek adjournment shows that respondent is trying to avoid hearing of the case. There appears no reason not to instruct the counsel until two months of the date. In the ordinary course, notice of advertisement is taken on the date it is published as usually the newspapers are not seen thereafter.

In the circumstances, I decline the request of learned counsel for the respondent for time. The application clearly

informs that dispute exists between the parties, which arise out the agreement between them, which contains the arbitration clause requiring the dispute to be referred to arbitrator. The parties having failed to seek appointment of arbitrator in terms of the agreement in spite of service of notice by the applicant, this application deserves to be allowed.

In the facts and circumstances of the case, Shri Mandal Prasad Bohra, a retired member of RHJS, resident of Jodhpur is appointed as sole arbitrator to whom the dispute shall be referred. The cost of the arbitration and fees of the arbitrator shall be as determined by the arbitrator himself.

The application is accordingly allowed.

(RAJESH BALIA), J.

Pankaj Baweja.